
REMARKS

Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

Each of claims 1, 6, 8, 10, and 14 has been amended for reasons unrelated to patentability, including at least one of: to explicitly present one or more elements implicit in the claim as originally written when viewed in light of the specification thereby not narrowing the scope of the claim, to detect infringement more easily, to enlarge the scope of infringement, to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.), to expedite the issuance of a claim of particular current licensing interest, to target the claim to a party currently interested in licensing certain embodiments, to enlarge the royalty base of the claim, to cover a particular product or person in the marketplace, and/or to target the claim to a particular industry.

Claims 17-20 have been added. Claims 1-20 are now pending in this application. Claims 1, 6, 8, 10, and 14 are the independent claims.

I. The Anticipation Rejection

Claims 1-16 were rejected as anticipated under 35 U.S.C. §102(a). In support of the rejection, Masuda (U.S. Patent No. 6,201,810) was cited. This rejection is respectfully traversed.

Masuda fails to establish a prima facie case of anticipation. See MPEP 2131. To anticipate expressly, the “invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim”. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001). The single reference must describe the claimed subject matter “with sufficient clarity and detail to establish that the subject matter existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the

invention”. *Crown Operations Int’l, LTD v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 USPQ2d

1917, 1921 (Fed. Cir. 2002). Moreover, the prior art reference must be sufficient to enable one with ordinary skill in the art to practice the claimed invention. *In re Borst*, 345 F.2d 851, 855, 145 USPQ 554, 557 (C.C.P.A. 1965), *cert. denied*, 382 U.S. 973 (1966); *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354, 65 USPQ2d 1385, 1416 (Fed. Cir. 2003) (“A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.”)

Specifically, claims 1, 6, 8, 10 and 14, from one of which each of claims 2-5, 7, 9, 15, and 16 depend recite “an eligibility marker stored in the router, **the eligibility marker not directly related to congestion**”.

Masuda does not teach expressly or inherently “an eligibility marker stored in the router, **the eligibility marker not directly related to congestion**”. Instead, Masuda allegedly recites a “CI (Congestion Indication) flag”. See col.7, lines 64-65. See also, FIG. 8.

Accordingly, it is respectfully submitted that the rejection of claims 1, 6, 8, 10, and 14 is unsupported by Masuda and should be withdrawn. Also, the rejection of claims 2-5, 7, 9, 11-13, 15, and 16, each ultimately depending from one of independent claims 1, 6, 8, and 14, is unsupported by Masuda and also should be withdrawn.

II. Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter:

“none of the references of record alone or in combination disclose or suggest the combination of limitations found in the independent claims. Namely:

claims 1-20 are allowable because none of the references of record alone or in combination disclose or suggest ‘an eligibility marker stored in the router, the eligibility marker not directly related to congestion’.”

CONCLUSION


It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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